

**ZONING BOARD OF APPEALS  
MINUTES  
JANUARY 18, 2005**

**Members Present**

Barry Silverstein – Chairman  
Ronald Critelli  
Lynne Raver  
Maureen Kangas - Alternate

**Members Absent**

MaryAnn Leenig  
Marc Breimer – Alternate

**Others Present**

Janis Gomez, Esq. – ZBA Attorney  
George McGann – Town Building Inspector, Acting Zoning Administrator  
Edward Peters - Town Building Inspector  
Christopher Colsey – Director of Municipal Development

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Notice of Appeal Hearing was published in the Beacon Free Press, The Poughkeepsie Journal and the Southern Dutchess News.

Notified of the variance requests were the Town Board, Town Fire/Building Inspector, Town Planning Board, New York State Department of Transportation, Dutchess County Department of Planning, Zoning Administrator and surrounding property owners.

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**The meeting of the Zoning Board of Appeals was called to order at 7:00pm by the chairman. He made announcements regarding the no smoking policy and the emergency exits and fire procedures.**

Chairman Silverstein welcomed Maureen Kangas as an official member of the Board. He announced that she had been an alternate and is replacing a member that is relocating.

The Chairman read the resignation letter of Richard Keeley into the record.

### **Minutes**

Chairman Silverstein called for comments or questions regarding the minutes from the December 14, 2004 meeting. Hearing none he requested a motion to accept the minutes as written.

Ronald Critelli made the motion to accept the minutes from the December 14, 2004 meeting.

Maureen Kangas seconded.

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

Maureen Kangas - Aye

### **Vote**

#### **Application No. 2004-016 Frances Cefaloni**

Maureen Kangas made the motion to GRANT the variance.

Lynne Raver seconded.

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

Maureen Kangas - Aye

### **APPEAL #1:**

Application No. ZB05-001, submitted by Lori Joseph Builders, is requesting the following variances; 1) front yard setback of 30ft where 35ft is the minimum 2) rear yard setback of 30ft where 40ft is the minimum 3) right yard setback of 15ft where 20ft is the minimum 4) lot size variance of 11,230sq ft where 20,000 is the minimum 5) lot depth of 100ft where 125ft is the minimum required in an R-20 Zoning District

The Chairman read the following communications:

Dutchess County Planning Department – Indicated it to be a matter of local concern.

Racine Berkow, Bluegrass Lane, objecting to the variances

The Town of Fishkill Planning Board – Indicated it to be a matter of local concern, but discussed and identified three specific items.

Todd and Susan Wurtz, Willow Rd, objecting to the variances

Robert Kirzoncic, Willow Rd, objecting to the variances

Bill Povall, Povall Engineering, presented to the Board. He stated that his company has been hired by the owner to do the engineering work on the parcel. Their proposal is to combine five original lots into one lot and erect a home on it. They have been working on a design that will be acceptable to the Board of Health for a septic system. They are aware that they will not be able to meet current Zoning Codes and that variances have been granted to undersized lots in the past.

He advised the Board that the Board of Health required them to move the house over 5ft further requiring a variance from the 20ft side yard setback. They are also proposing to bring the house closer to the road requiring a 5ft variance from the front yard setback. The three additional variances requested are similar to variances granted on this property back in April 2002. The ZBA approved a 10ft variance from the rear yard setback and a lot size variance from the required 20,000 sq ft. Mr. Povall advised that their research indicated that a third variance for the lot depth should have been requested.

Mr. Povall advised that they have designed a septic system for a two bedroom house. The specific design adds an additional three lines of trenches which is approximately 40% more than what is required. This plan will extend the existing pipe which crosses Meadow Lane for drainage into an existing ditch. The excess water created by the impervious surface will be piped directly to the ditch. In regards to ground water, the proposal has another drain approximately six to seven feet deep to intercept the ground water coming off of the mountain. The water would be diverted into a ditch that already has water flowing in it. This would be an improvement for the drainage issue.

Chairman Silverstein asked for verification that they are looking to merge two lots into one. Mr. Povall stated that there are currently two tax parcels which were originally five. They are going to take the two tax parcels and make them into one. Chairman Silverstein stated that Mr. Povall has addressed two concerns regarding the water flow. They are both being re-routed into the ditch. Chairman Silverstein asked if the ditch will be able to handle all the additional down flow. Mr. Povall stated that the amount of water that they will actually catch is minimal. There is a considerable amount of water that comes

off of the mountain, but the extra water that they will create with the house is minimal. The percolation for the area is slow causing the flow.

Maureen Kangas asked if they needed to pass a perk test. Mr. Povall stated that they did pass the perk test. It is at the upper end allowable by the Board of Health. They had perks of 57 minutes which at the upper end. When you have that type of percolation rate and it rains, most of the water runs off because it doesn't have a chance to get into the ground with the slopes. By building a house and creating impervious surfaces, where water will run off and won't seep in, the amount of extra water created is minimal given the existing conditions.

Chairman Silverstein reiterated that Mr. Povall feels that what they add will not matter.

Lynne Raver asked if that was the way they felt or did another agency advise them. Mr. Povall advised that they have analyzed it and this is their finding.

Chairman Silverstein called for additional comments or questions from the Board Members.

Ronald Critelli asked what the width and depth on the stream is. Mr. Povall advised that it varies from three to four feet wide. Currently through the property it is approximately two feet deep.

Chairman Silverstein advised the applicant and the audience that the variances that had been granted two years ago have expired. They are being applied for again with this application. The only other item that was a concern from the Planning Board is that the applicant does not have approval from the Board of Health for the septic. Chairman Silverstein asked Mr. Povall to clarify the situation. Mr. Povall advised that they do not have approval. They have been working with the Board of Health for that past two years and they have designed a system that is "verbally" acceptable to the Board of Health.

Chairman Silverstein stated that the design was for the septic. He asked Mr. Povall about the fact that the original application of the house did not include a den just the two bedrooms. Mr. Povall confirmed this. The Chairman asked if they had to change to include the fact that there is now a den. Mr. Povall advised that it was not brought up by the Board of Health.

Chairman Silverstein called for comments or questions from the floor.

Frank DiPasqua, Blue Grass Lane, stated that he recently went through the process trying to build on Meadow Lane. His biggest concern at this point is the approval to get water for this property. Mr. DiPasqua stated that he had been denied water from Blue Grass Lane because they have a flow problem and a pressure problem.

Chairman Silverstein asked for verification that when Mr. DiPasqua stated "water" he meant Town water. Mr. DiPasqua confirmed this. He advised that his property runs between Meadow Lane and Blue Grass Lane, which is further south closer to the

mountain. He stated that he had to have his water lines backed up to Blue Grass Lane which has a higher pressure and greater flow. Mr. DiPasqua stated that he couldn't understand why one piece of property is able to get approval when he could not. Mr. DiPasqua asked if it was because he was a private person and they are builders. Chairman Silverstein stated that it was not. The Chairman advised Mr. DiPasqua that he would not be able to answer his question as to why the water line was not extended to his house. He stated that he does not know if the water line has been extended to the applicant's property. The Chairman advised Mr. DiPasqua that the ZBA has no involvement those decisions. The Chairman asked George McGann who Mr. DiPasqua should contact regarding this issue.

Mr. McGann stated that Mr. DiPasqua should contact John Andrews. He verified with Bill Povall that the septic system design was predicated on the availability of Town water. Mr. Povall confirmed that it was. Mr. McGann stated that any design would require the approval of the Department of Health.

Chairman Silverstein advised Mr. DiPasqua that there is no advantage with a private citizen vs. commercial builder because the commercial builders also feel that they are scrutinized and the ZBA would cater to the private citizen. The Board does not cater to either. The ZBA goes by the Zoning and vote individually as each member feels what fits into the legality of the request. Going back to the current question, Chairman Silverstein again advised Mr. DiPasqua that the Board could not answer why he was not extended a water line.

Mr. DiPasqua asked who could give him the answer to his question prior to this variance being granted. Chairman Silverstein suggested he contact John Andrews, the Town Engineer. Mr. Andrews may refer him to another person, but he is the most logical person to start with.

The Chairman advised Mr. DiPasqua that his situation will have no reflection on the current application. He also advised Mr. DiPasqua that the Department of Health may turn them down and the application then becomes moot. They must have approval before they can go forward. Mr. DiPasqua stated that the application states that they have approval pending Town approval. Chairman Silverstein advised that the Town Planning Board discovered the error and it has been corrected. The Chairman made the statement that as of this meeting there is no Department of Health approval on this property. Mr. DiPasqua asked why they would apply for a variance. The Chairman advised that they did apply. Nothing has been approved or denied. The ZBA is just listening at this point and listening to any comments that anyone else may have to say regarding the variances.

Mr. DiPasqua asked to go on record that this variance not be granted. He requested that the 20,000 sq ft be maintained. Many residents, who purchased property, purchased it to make sure they could meet the setbacks. They made sure that the septic systems and homes they built met all the setback requirements. They have their 100% expansion. He asked Mr. Povall if they have a 100% expansion as well. Mr. Povall stated that the current proposal has a 40% expansion. Mr. DiPasqua added that to his complaint. He had

to have a 100% expansion, they should too. Mr. DiPasqua again stated that the variances should not be granted for a lot that is half the size of the zoning. They can't meet any of the setbacks and their septic system is not in compliance with what everybody else must have. Chairman Silverstein advised Mr. DiPasqua that he is on record.

Chairman Silverstein called for additional questions for comments from the floor. Hearing none he called for additional comments from the Board Members.

Lynne Raver asked when the Department of Health would give a decision. Mr. Povall advised that with the particular notes the Department of Health is requiring to be put on the plan and the design of the house, they will not be able to receive approval until they are granted variances.

Chairman Silverstein advised that if the variances are granted and the Department of Health does not give their approval they will not be able to proceed.

Maureen Kangas asked if that was what happened with the last approval. Mr. Povall advised that the prior time there had been an interested party, and that to the best of his knowledge decided not to move forward after the variances had been granted. Lori Joseph has since purchased the property.

Ms. Kangas stated that if the variances are granted and they were unable to get the approval or hook up to the water and decided not to build within the year, the variances would expire.

Chairman Silverstein called for a motion to close or adjourn the meeting.

Janis Gomez asked if there are additional properties that have the similar problems. Chairman Silverstein stated that he was unsure and would request that John Andrews advise the Board regarding the slopes and drainage. Ms. Gomez advised that the Members may want to keep the Hearing open.

Maureen Kangas made the motion to adjourn the Public Hearing.

Ronald Critelli seconded.

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

Maureen Kangas - Aye

Mr. Povall advised that he would provide Mr. Andrews with a copy of the map. Chairman Silverstein advised him to go through George McGann.

Janis Gomez advised for the record that regarding the Cefaloni application, there had been some confusion regarding the actual size of the variance needed. She advised that the application was written correctly and that the variance was for 8ft.

### **Additional New Business**

Chairman Silverstein advised that a request has been received from Hogencamp / Figueroa that their denied appeal be reopened. The Chairman stated that if the case is reopened, the application fee is waived but the escrow will need to be updated to include the new meeting.

Debra Hogencamp stated that they went through the process and ended up paying over \$800.00 in legal fees just to get a “no” answer. When she spoke with the Supervisor, Ms. Pagones stated she would waive any related fees. Chairman Silverstein advised that he could not speak for the Supervisor. He stated that this is a quasi-legal board. The Town Board has the authority to waive the application fee. Any additional fees are not in their purview. The Chairman stated that it was to be understood that if the Hearing was to be reopened, that they would incur the additional costs of the Hearing, as they did before, with the exception of the application fee.

Ms. Hogencamp advised that one of the reasons they met with the Town Supervisor, was that while they were attending meetings for five months, giving the Board the information they were requesting, they had no idea that they were incurring the fees. One request that they would like to see is that if it would be possible for the Board to advise an applicant that if they proceed from one step to another step that they would incur a certain legal fee.

Ms. Hogencamp stated that she and her husband were shocked to receive the bill in October for \$838.00 after the variance was denied in August.

Chairman Silverstein asked George McGann what the process for the application was. Mr. McGann stated that there is a minimum escrow amount that is requested. The Chairman asked if the applicant is advised that they may incur additional costs if the Hearing is prolonged. Mr. McGann stated that the application states additional costs beyond what has been collected must be reimbursed. The actual cost is a direct result of the time involved. There may be a large mailing and newspaper publications. Then there are the legal fees which are based upon the number of hours that are put in on it.

Ms. Hogencamp stated that she understands that there are notices sent to the surrounding neighbors. She didn't think the mailings exceeded the escrow. She stated that they were not aware that as the case proceeded, that they were accruing hundreds of dollars in legal fees. She stated that before she incurs additional fees that she be advised that the escrow has been depleted.

Chairman Silverstein advised Ms. Hogencamp that when he had been a member of the Town Board that if an escrow account was depleted, the meeting was cancelled. More

people objected to that and being delayed that they preferred that the process continue and just bill.

Ms. Hogencamp advised that even if she had been billed in May for what she owed in April that exceeded the escrow would have been better than to go through five months. She could have made a financial decision on whether she wanted to continue.

Chairman Silverstein stated that it would be addressed. He does not know what the response or answer will be. The Supervisor wants to make the process for all residents as simple as possible. He reiterated that he wanted to be sure that Ms. Hogencamp understands that if it is reopened that they are open to incur additional costs.

Ms. Hogencamp stated that since they have delayed their construction for a year, her hope is that if their case is reopened, that they may come up with a system that will inform her of how much more money they will invest in this process.

Chairman Silverstein advised her that if the case is reopened that they will have another Hearing at another date. That will incur another cost. Based on that Hearing, if there is nothing barring it, the decision will be reached at the next meeting. The Chairman stated that he did not know what that would incur in regards to the attorney.

Ms. Hogencamp asked if there was someone who could explain what made their case so costly. Is the \$838.00 fee typical?

Frances Cefaloni stated that it was not typical but that she was there with the same problem.

Chairman Silverstein stated that he didn't know the costs, but the longer the application takes to process, the more questions asked, and the more individuals that are involved, such as the applicant tonight, John Andrews is going to go out. Someone is going to pay to send him out. That is going to be the applicant.

Ms. Hogencamp stated that she understood the process. What she wants to know is that if she needs to attend three or four meeting what the cost was going to be. Janis Gomez stated that it is based on an hourly rate and she doesn't know what the current Town rate is.

Ms. Gomez stated that it is in Ms. Hogencamp's best interest to ask the Board if they are going to reopen the case so that they don't have to come to another meeting to hear the answer to that question. Ms. Gomez stated that Ms. Hogencamp could then delay the setting of the Public Hearing date until her questions are all answered.

Dennis Zack, Town Councilman, stated that he had never heard of a denied application being reopened a few months later. The applicant has the right to go to the Supreme



Court and appeal, but not to come back to the Board that originally denied it. Chairman Silverstein stated that they have the right to come back to the ZBA. The vote has to be unanimous among the Board Members present in order to reopen it.

Councilman Zack stated that a cost cannot be attached since it is impossible to determine how much time the Town Engineer or Attorney has to put into a case. Those costs will be paid by the applicant.

Ms. Hogencamp stated that she understands that if she reopens the case she will incur the fees. She asked if it was possible to know at the end of each month how much she owes. Chairman Silverstein stated that he did not know how the Town does its billing. Ms. Hogencamp asked who does the billing. Nancy Lecker advised that she does the billing and for Ms. Hogencamp to see her after the meeting regarding the billing.

Chairman Silverstein asked if they did want to reopen their case. Ms. Hogencamp and Mr. Figueroa stated that they did. Ms. Lecker advised that there is no fee to reopen a case. The fees begin when the applicant is placed on the agenda. Councilman Zack reiterated that what the Supervisor stated was that the application fee would be waived, but any additional costs, such as mailings and publications, Ms. Hogencamp would have to pay. They can not be waived.

Chairman Silverstein asked if Ms. Hogencamp would make a formal request to reopen her case. Janis

Gomez stated that the applicant may wish to make a comment prior to the ZBA voting. Chairman Silverstein agreed that it may be helpful to advise why we should reopen and possibly change their minds. Ms. Hogencamp formally requested that the ZBA reopen the request for the variance to review the elements of the case. They are looking to add a bedroom and would like to add a staircase as a second means of escape from the house in case of a fire emergency. Ms. Hogencamp stated that she had written a letter to Chris Colsey stating the reasons why they need the staircase. She advised that she has elderly parents and a handicapped sister-in-law. Their only means of egress in a fire emergency would be a metal ladder that hangs on the window. Those are her personal reasons which need to be shared to the Board regarding their need for the additional staircase. Ms. Hogencamp reminded the Board that the original request was for reduced to 2.75ft. That is all that they are asking for. The new side yard setback will be 17.25ft on the side that requires 20ft. Their architect attended the July meeting and explained how he was able to diminish the amount from the original 5ft that they were asking.

Chairman Silverstein advised Ms. Hogencamp that if the case is reopened that they would need to make a new presentation to the Board.

Chairman Silverstein called for a motion to reopen the case.

Lynne Raver made the motion to reopen the denied variance appeal.  
Ronald Critelli seconded.

Motion Carried

Barry Silverstein – Aye  
Ronald Critelli – Aye  
Lynne Raver – Aye  
Maureen Kangas - Aye

Chairman Silverstein advised the applicant that they have been granted a reopening and will be advised when to appear. The Chairman asked Janis Gomez if they will be able to vote at that Hearing or follow normal procedures. Ms. Gomez advised that the Board should follow normal procedures. The Chairman advised Ms. Hogencamp that, providing they receive all the information requested, a vote will be taken at the following meeting. Ms. Gomez advised Ms. Hogencamp that since it is a rehearing, in order to reverse the previous decision, the vote must be unanimous among the Board Members present. Ms. Hogencamp asked what information she would need to present. The Chairman advised that he could not tell her what to do or not to do. Ms. Gomez stated the five criteria in making the decision were in the written decision she received.

Frank DiPasqua asked when any decisions are going to be made regarding Lori Joseph Builders. Chairman Silverstein stated that the Public Hearing was still open and he would need to attend next month's meeting where additional information will be given. If at that point both the applicant and the Board members are satisfied with the information given, then a vote will take place at the following meeting. Chairman Silverstein advised Mr. DiPasqua that the ZBA does not render a decision the same night at the Public Hearing.

Mr. DiPasqua asked what basis variances are granted. Is it what the ZBA feels is best for the community or the needs of the applicant? Are there certain factors? Chairman Silverstein deferred the question to the Attorney. Janis Gomez stated that there are two types of variances, a "use" variance and an "area" variance. For the application that Mr. DiPasqua is concerned with, there is a five part criteria which is listed in the Town Law and is also listed in the State Law. She advised that a copy could be made for him following this meeting. The Chairman read the criteria for the area variance. Mr. DiPasqua stated that he understood that the builder purchased the property knowing that it was an undersized lot. They are taking the risk of not receiving a variance. Ms. Gomez stated that they should not discuss the case since the Public hearing has been adjourned and the parties have left.

Ms. Hogencamp asked when she would be informed of the next meeting. She asked when the meeting would be. Nancy Lecker stated that the next meeting is February 15<sup>th</sup>. The deadline for that meeting has past and the following meeting is March 15<sup>th</sup>. Ms.

Hogencamp advised that she didn't understand. Ms. Lecker stated that the deadline for each meeting the 7<sup>th</sup> of the month prior. Distributions need to be sent to the County, State, newspapers, and mailings. Ms. Hogencamp asked if there was something that she needed to provide to the ZBA. Ms. Lecker advised Ms. Hogencamp to see her after the meeting to go through her original file and to see if there is anything additional that she needs.

Mr. DiPasqua asked for verification that Lori Joseph Builders was on for the February 15<sup>th</sup> meeting. Ms. Lecker confirmed that they were. Janis Gomez asked the Chairman if he wanted her to contact John Andrews. Chairman Silverstein replied that he would prefer her to.

Chairman Silverstein called for a motion to adjourn the meeting.

**Maureen Kangas made the motion to adjourn the meeting.**

**Ronald Critelli seconded.**

**Motion carried.**

**Meeting adjourned at 7:58pm.**

Respectfully submitted,

Nancy Fitzgerald-Lecker  
ZBA Clerk